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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,475	11/20/2001	Vladislav Olchanski	58367.000003	2706

7590 07/31/2009
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EXAMINER

TANG, KAREN C

ART UNIT	PAPER NUMBER
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2451

MAIL DATE	DELIVERY MODE
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07/31/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/996,475
Filing Date: November 20, 2001
Appellant(s): OLCHANSKI ET AL.

Thomas E. Anderson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/24/2009 appealing from the Office action mailed 11/12/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3675640	Gatts	7-1972
6650932	Menzie et al	11-2003
5835384	Lin	11-1998

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21, 23-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatts (US 3,675,640) in view of Menzie et al (US 6,650,932) in further view of Lin (US 5,835, 384).

14. Referring to Claims 1, 11, 19, 24, 25, and 26-30, Gatts discloses a method of collecting and reporting outcomes data for benchmarking medical procedures comprising the steps of:

at least one processor readable medium (computer 44, refer to Col 7, Lines 24);

instructions carried on the at least one processor readable medium (computer 44, refer to Col 7, Lines 24);

wherein the instructions are configured to be readable from the at least one processor readable medium by at least one processor and thereby cause the at least one processor to operate (computer, refer to Col 7, Lines 24) so as to:

collecting first outcomes data sets for one or more indicators associated with one or more medical procedures (records test data, refer to Abstract, the data is in the form of the significant parameters/indicators of the medical procedures, such as cardiac, pulmonary, and physical characteristics, refer to Col 1, Lines 35-40) for a plurality of patients (large numbers of

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individuals) in a first period of time (during the time when the data are collected) via one or more user interface (data is extracted from the sensor/interface on the exercising machine, refer to abstract and Col 2, Lines 5) located at one or more user entities (sensors located on the machine location of the clinic, refer to abstracts);

establishing a norm based at least in part on an outcomes data group (establish norm, refer to abstract), the outcomes data group comprising a plurality of the first outcomes data sets for the one or more indicators associated with one of the one or more medical procedures for the plurality of individuals (see abstracts);

collecting second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the individual in a second period of time via the one or more user interface located at the one or more user entities (collects the information associated with medical procedures from the patient, refer to Col 7, Lines 12-19 during a period of the time after the norm is established, refer to Col 7, Lines 36 at a clinic);

converting at least some of the second outcomes data sets (one data set) for the one or more indicators associated with the one of the one or more medical procedures for the plurality of individuals into at least one outcomes result (data collected are converted into curve, refer to Col 7, Lines 56);

comparing a selected one of the at least one outcomes result to the norm (refer to Col 7, Lines 29-35); and

generating at least one outcomes monitoring report comprising the selected one of the at least one outcomes result and the norm (printout the results vs the norm, refer to Col 7, Lines 29-60);

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wherein the one or more indicators including at least one of verbal responses, measured analytical data, and observation of a third-party observer (refer to Col 6, Lines 70-75);

Although Gatts disclosed the invention substantially as claimed, Gatts is silent in regarding “the second outcomes data sets are collected from plurality of individuals.”

Menzie, discloses a similar teaching of collecting data associated with medical procedures comprising: “collecting second outcomes data sets are collected from a plurality individuals (each collecting devices located at different medical facility, refer to Col 3, Lines 65-67. Each device collects patients’ medical condition information Col 2, Lines 10-11 and analyzes the data to provide the test result (convert the second outcomes data), refer to Col 2, Lines Col 15-18).”

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Gatts and Menzie because Menzie's teaching of “collecting second outcomes data sets are collected from a plurality individuals” would improve Gatts's system by efficiently collect medical data from geographically dispersed devices and process it in the efficient manner (supported by Lin Col 2, lines 60-67).

15. Referring to Claims 2 and 12, Gatts discloses transmitting the first and second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the plurality of individuals to a data processor (refer to abstracts and to Col 7, Lines 23-35).

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16. Referring to Claims 3, 5, 13, 15, and 21, although Gatt disclosed the invention substantially as claimed, Gatt is silent in regarding "selectively restricting access to the at least one outcomes monitoring report"

Menzie, discloses a similar teaching of collecting data associated with medical procedures comprising: "selectively restricting access to the at least one outcomes monitoring report (refer to Col 11, Lines 5-30)."

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Gatts and Menzie because Menzie's teaching of "collecting second outcomes data sets are collected from a plurality individuals" would improve Gatts's system by efficiently collect medical data from geographically dispersed devices and process it in the efficient manner (supported by Lin Col 2, lines 60-67).

17. Referring to Claims 4, and 14 and 20, although Gatt disclosed the invention substantially as claimed, Gatt is silent in regarding "posting the at least one outcomes monitoring report over the webpage".

Menzie, discloses a similar teaching of collecting data associated with medical procedures comprising: "posting the at least one outcomes monitoring report over the webpage (refer to Col 4, Lines 14)."

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Gatts and Menzie because Menzie's teaching of "collecting second outcomes data sets are collected from a plurality individuals" would improve Gatts's system by

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efficiently collect medical data from geographically dispersed devices and process it in the efficient manner (supported by Lin Col 2, lines 60-67).

18. Referring to Claim 6, Gatt discloses collecting first and second outcomes data sets associated with the one or more medical procedures from at least one user entity at a plurality of discrete intervals (see abstracts and Col 7, Lines 22-65).

19. Referring to Claim 7, Gatt discloses generating the at least one outcomes monitoring report from the plurality of discrete intervals (refer to 35-40).

20. Referring to Claims 8 and 16, Gatt discloses collecting the second outcomes data sets for the one or more indicators associated with the one or more medical procedures for the individual located at the one or more user entities (collects the information associated with medical procedures from the patient, refer to Col 7, Lines 12-19 during a period of the time after the norm is established, refer to Col 7, Lines 36), individually identifying and converting the second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the plurality of individuals located at each user entity of the one or more entities (data collected are converted into curve, refer to Col 7, Lines 56), and wherein the second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the individual located at the one or more user entities comprises the outcomes data group (collects the information associated with medical procedures

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from the patient, refer to Col 7, Lines 12-19 during a period of the time after the norm is established, refer to Col 7, Lines 36 at a clinic).

Although Gatts disclosed the invention substantially as claimed, Gatts is silent in regarding “the second outcomes data sets are collected from plurality of individuals.”

Menzie, discloses a similar teaching of collecting data associated with medical procedures comprising: “collecting second outcomes data sets are collected from a plurality individuals (each collecting devices located at different medical facility, refer to Col 3, Lines 65-67. Each device collects patients’ medical condition information Col 2, Lines 10-11 and analyzes the data to provide the test result (convert the second outcomes data), refer to Col 2, Lines Col 15-18).”

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Gatts and Menzie because Menzie's teaching of “collecting second outcomes data sets are collected from a plurality individuals” would improve Gatts's system by efficiently collect medical data from geographically dispersed devices and process it in the efficient manner (supported by Lin Col 2, lines 60-67).

21. Referring to Claim 9 and 17, Gatt discloses wherein the at least one outcomes monitoring report includes the at least one outcomes result for a selected user entity of the one or more user entities and at least one comparison of the norm to the least one outcomes result for the selected user entity (printout the results vs the norm, refer to Col 7, Lines 29-60).

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22. Referring to Claims 10, and 18, Gatt discloses at least one processor readable medium for storing a computer program of instructions configured to be readable by at least one processor for instructing the at least one processor to execute a computer process for performing the method as recited in claim 1 (computer, refer to Col 7, Lines 24).

23. Referring to Claim 23, Gatt discloses wherein the first and second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the plurality of individuals are primary source data sets (refer to abstracts).

(10) Response to Argument

The examiner summarizes the various points raised by the appellant and addresses relies individually.

Group 1: Claims 1-10

(1) Claim 1:

Appellant argues that the cited art of records failed to establish a prima facie case of obviousness, specifically, Menzie fails to be qualify as a proper prior art.

The examiner disagrees.

As stated in the Final Office Action filed in Nov 12, 2008, the affidavit filed on 5/25/07 under 37 CFR 1.131 fail to be effective to overcome Menzie et al's reference.

The declaration filed on 05/25/07 fails to provide evidence to support the indicated claim of conception prior to the effective date of the Menzie reference. The evident is not enough to satisfy issues of diligence or conception to practice or an actual reduction to practice.

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- i) The declaration attempt to prove the invention by showing conception before May 15, 2000 (the effective date of Menzie) before the date of filing of this application (Nov 20, 2001).
- ii) The evidence submitted is *insufficient* to establish a conception of the invention prior to the effective date of the Menzie reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The exhibit does not demonstrate the evidence or proof in showing that the claimed conception took place. Appellant *has not yet support each of claim element with the affidavit to demonstrate conception*. Appellant must point out where each claimed limitation is according to the affidavit on record.
Appellant has provided the same 23 pages (pages 4-27 from the Exhibit A) from the affidavit for mapping all the limitations without explaining how these pages are relevant to the claim limitations. Without correlating each limitations of the independent and dependent claims (e.g., mapping all limitations) Appellant fails to show possession of every feature recited in the count, and that every limitation of the count must have been known to the inventor at the time of the alleged conception.
- iii) Appellant has not demonstrated the reasonable diligence from the period of **May 15, 2000, to November 21, 2000**.
- iv) Since Appellant has not satisfy the burden of showing how the Exhibits of affidavits correlate with claim limitations, according to MPEP 715.07(a) states: "In determining the sufficiency of a 37 CFR 1.131 affidavit or declaration, diligence need not be considered unless

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conception of the invention prior to the effective date is clearly established, since diligence comes into question only after prior conception is established. Ex parte Kantor, 177 USPQ 455 (Bd. App. 1958). "Since Appellant has not clearly established the conception, therefore, evident showing diligence has not been considered.

v) On page 14 of the Appeal, Appellant alleged that

"The declaration submitted on November 9, 2005, provide a showing of conception prior to the Menzie reference date, as well as due diligence from prior to the Menzie reference date to both actual and constructive reduction to practice"

However, Examiner respectfully submit that the declaration and evidences (Exhibits A-G) under 37 C.F.R 1.131 filed on dates 5/25/07 and 11/09/05 are insufficient to establish diligence from a date of conception to an constructive reduction to practice (i.e., the filing of the invention) as well as actual reduction to practice (i.e., actual working model of the invention).

vi) The included Declaration fails to properly describe the events/dates from alleged conception (prior to May 15, 2000) until the Reduction to Practice (November 21, 2001).

Appellant intends to demonstrate the diligent by providing the following evidences:

- Exhibit B: A letter agreement dated August 4, 1998, between Chironet and Social Scientific System Inc (SSS)
- Exhibit C: Four Invoices- 1st Invoice on the date of November 30, 1998 for the work done during the Period of October 15, 1998, to November 30, 1998; A 2nd Invoice on the date of December 31, 1998, for the work done during the period of December 1st, to December 30th, 1998; A 3rd Invoice on the date of January 31, 1999, for the work done during the period of January 1, 1999-January 31, 1999; and a 4th Invoice Dated back in

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March 31st, 1999 for the work done during the period of March 1, 1999 to March 31, 1999.

- Exhibit D: A Marketing Agreement between Surgical Outcomes dated July 7, 2000
- Exhibit E: A final Documentation dated September 24, 2000 From Chironet to Social Scientific System, Inc.

According to MPEP 2138.06 under “Reasonable Diligence” stating:

* * *

“An applicant must account for the entire period during which diligence is required.

Gould

v. Schawlow, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating

that there were no weeks or months that the invention was not worked on is not

enough.); In re Harry, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964)

(statement that the subject matter “was diligently reduced to practice” is not a showing

but a mere pleading). A 2-day period lacking activity has been held to be fatal.”

* * *

Thus Appellant has not demonstrated the reasonable diligence from the period of **May 15, 2000** (i.e., just prior to the date of Menzie et al), to **November 21, 2000** (i.e., effective filing date) for the following reasons:

- Appellant has not demonstrated the reasonable diligence from the period of **March, 1999, to July, 2000.**

In support of the alleged due diligent, Appellant submitted two relevant exhibits, specifically Exhibit C and D. Relevant portion of Exhibit C demonstrated work performed

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ending on date March 31st, 1999. Exhibit D shows agreement for marketing the invention (i.e., commercial exploitation) dated July 7th, 2000. The combination of Exhibit C and D do not support due diligence between the period of March 31st, 1999 to July 7th 2000. As stated in the above cited section of MPEP 2138.06, *the entire period during which diligence is required*.

- Appellant has not demonstrated the reasonable diligence from the period of **July 2000, to September 2000**.

In support of the alleged due diligent, Appellant submitted two relevant exhibits, specifically Exhibit D and E. Exhibit D shows agreement for marketing the invention (i.e., commercial exploitation) dated July 7th, 2000. Exhibit E shows a communication between Chironet and Social Scientific System, Inc in regards to seek critique of a "final documentation" dated September 24, 2000. It is unclear to Examiner how "a final documentation" would be relevant in relating to the filing of the present invention.

Thus, the combination of Exhibit D and E do not support due diligence between the period of July 7th 2000 to September 24, 2000. As stated in the above cited section of MPEP 2138.06, *the entire period during which diligence is required*.

- Appellant has not demonstrated the reasonable diligence from the period of **September 2000, to November 2000**.

As for remaining portion of critical period between September 2000 to November 2000 (i.e., the effective filing date), Appellant fails to provide critical evident to support due diligence.

Furthermore: according to MPEP 2138.06, Under "Work Relied upon to show reasonable diligence must be directly related to the reduction to practice" stated:

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* * *

“The court distinguished cases where diligence was not found because inventors either discontinued development or failed to complete the invention while pursuing financing or other commercial activity.);” and “The work relied upon must be directed to attaining a reduction to practice of the subject matter of the counts. It is not sufficient that the activity relied on concerns related subject matter.” Gunn v. Bosch, 181 USPQ 758, 761 (Bd. Pat. Inter. 1973) (An actual reduction to practice of the invention at issue which occurred when the inventor was working on a different invention “was fortuitous, and not the result of a continuous intent or effort to reduce to practice the invention here in issue. Such fortuitousness is inconsistent with the exercise of diligence toward reduction to practice of that invention.” 181 USPQ at 761. Furthermore, evidence drawn towards work on improvement of samples or specimens generally already in use at the time of conception that are but one element of the oscillator circuit of the count does not show diligence towards the construction and testing of the overall combination.); Broos v. Barton, 142 F.2d 690, 691, 61 USPQ 447, 448 (CCPA 1944) (preparation of application in U.S. for foreign filing constitutes diligence); De Solms v. Schoenwald, 15 USPQ2d 1507 (Bd. Pat. App. & Inter. 1990) (principles of diligence must be given to inventor’s circumstances including skill and time; requirement of corroboration applies only to testimony of inventor); Huelster v. Reiter, 168 F.2d 542, 78 USPQ 82 (CCPA 1948) (if inventor was not able to make an actual reduction to practice of the invention, he must also show why he was not able to constructively reduce

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the invention to practice by the filing of an application)."

* * *

Thus, since Exhibit D is regarding to a Marketing Agreement, and according to the above cited section of MPEP 2138.06, such evident (Exhibit D) should not be considered as relevant evident in supporting Appellant's due diligent.

In sum, the relevancy of Exhibit C-E fails to support the reasonable diligence from the critical period of May 15th, 2000 to November 21, 2000.

(vii) Appellant 's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Therefore, Menzie is a proper prior art.

Appellant argues that the cited art of records teach away from each other.

Examiner disagrees.

(i) First, Gatts and Menzie disclose collecting medical information in real-time (e.g., heart rate, blood pressure., etc), However, while both references are in the same field of endeavor, Gatt's invention would benefit from Menzie's invention by modified its system to provide a network capability by having the capability to transmit the collected result (i.e., test result) to another requesting center.

(ii) Second, Lin, by supporting the motivation statement by demonstrates that it is well known in the art (Patent Dated by Nov, 1998) that such a technology (i.e., transmitting testing

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result remotely from one testing center to another) has existed (see Col 2, Lines 60-67 and Col 2, Lines 8-36).

Therefore, cited art of records Gatts, Menzie and Lin did not teach away from one another.

Appellant argues that it would have not been obvious to combine the cited art of records.

Examiner disagrees.

The rationales supporting the obviousness in KSR include: 1) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention and 2) Combining prior art elements according to known methods to yield predictable results;

Lin, demonstrates the rational in supporting the obviousness in KSRs by stating:
"...automatically input data from geographically dispersed instruments, preferably by communication line, and to pass such data automatically to the storage area from which the peer group target are determined without the need for manual editing..." (see Lin, Col 2, Lines 60-65); and

"It would be useful for laboratories, particularly those performing medical tests, to have a more current indication of their performance with respect to their peers, so that if a laboratory is performing out of control, that fact can be brought to light at the earliest possible moment." (see Lin, Col 2, Lines 30-36)

Therefore, cited art of records Gatts, Menzie and Lin would have been obvious to combine.

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Appellant further argues that the cited art of records failed to demonstrate the teaching of
“collecting first outcomes...located at one or more user entities;
establishing a norm...for the plurality of individuals;
collecting second outcomes... located at the one or more entities;
converting at least some...into one outcomes result; “
Examiner disagree.

The cited art of records Gatts, Menzie, and Lin disclosed the limitations:

* * *
"collecting first outcomes data sets for one or more indicators associated with one or more medical procedures for a plurality of individuals in a first period of time via one or more user interfaces located at one or more user entities; establishing a norm based at least in part on an outcomes data group, the outcomes data group comprising a plurality of the first outcomes data sets for the one or more indicators associated with one of the one or more medical procedures for the plurality of individuals; collecting second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the plurality of individuals in a second period of time via the one or more user interfaces located at the one or more user entities; converting at least some of the second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the plurality of individuals comparing a selected one of the at least one outcomes result to the norm; and generating at least one outcomes monitoring report comprising the selected one of the at least one outcomes result and the norm."

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* * *

In references to Gatts,

- i) Gatts clearly disclosing that collecting first outcomes data sets (collecting a first set of test data e.g., patients health conditions data., etc, from thousands of patients, refer to abstract, Col 6, Lines 70-75-Col 7, Lines 1-12, Lines 40-45 and Col 8, Lines 26-36) for one or more indicators (the body type, body temperatures, resting pulse, etc, refer to Col 7, Lines 5-15) associated with one or more medical procedures (e.g., test/medical procedures for establishing a cardiac performance test, refer to Col 7, Lines 40-45. It is noted that the term "procedure" is interpreted according to the American Heritage College Dictionary as "a manner of proceedings") for a plurality of individuals (collecting data from thousands of patients with similar type of characteristics to establish a "predetermined norm", refer to Col 7, Lines 33-40, abstract and Col 3, Lines 5) in a first period of time (patients entering information, refer to Col 6, Lines 32, which composite with other historical patients' data, to form a pretermined norm, refer to Col 7, Lines 40-45 and Col 3, Lines 3-10) via one or more user interfaces (machine(s) that retrieves thousands patients information in order to determine the pre-determine normal, refer to Col 2, Lines 2-6, Col 3, Lines 5, Col 7, Lines 40-45) located at one or more user entities (at clinic, refer to Col 6, Lines 31);
- (ii) Gatts disclosing that establishing a norm (a normal is establishing after collecting medical data from plurality of individuals with similar characteristics, refer to Col 3, Lines 5) based at least in part on an outcomes data group (after testing a thousands of patients' medical data with the similar characteristics, refer to Col 7, Lines 40-45), the outcomes data group comprising a plurality of the first outcomes data sets for the one or more indicators (the body type, body temperatures, resting pulse, etc, refer to Col 7, Lines 5-15) associated with one or more medical

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procedures (e.g., test/medical procedures for establishing a cardiac performance test, refer to Col 7, Lines 40-45. It is noted that the term "procedure" is interpreted according to the American Heritage College Dictionary as "a manner of proceedings") for the plurality of individuals (refer to Col 3, Lines 5);

(iii) Gatts disclosing that collecting second outcomes data sets (collect result data sets from patient including physical conditions and exercise test data, refer to Col 7, Lines 24-27) for the one or more indicators (one or more parameter values collected for a patient's body type, body temperature, blood pressure, oxygen consumption., etc, refer to Col 7, Lines 5-15) associated with the one or more medical procedures (e.g., test/medical procedures for establishing a cardiac performance test, refer to Col 7, Lines 40-45) for the individual in a second period of time (after the pretest state, refer to Col 7, lines 12-15) via the one or more user interfaces located at the one or more user entities (collected by the connections of the medical machine, refer to Col 7, Lines 20-30, at clinic, refer to Col 6, Lines 31);

(iv) Gatts disclosing converting at least some of the second outcomes data sets for the one or more indicators associated with the one or more medical procedures for the plurality of individuals into at least one outcomes result ((e.g., converting the parameter values collected from the sets of exercise data associated with cardio performance testing, where the testing is for collecting sets of data from the thousands of patients/people, (i.e., medical procedures for the plurality of individuals) into a single weighted performance summary curve (i.e., outcome result), refer to Col 7, Lines 40-45 and Col 3, Lines 30);

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(v) Gatts disclosing comparing one of the at least one outcomes result to the norm (compare the clinical data of the individual with a predetermine norm of the person with the similar condition, refer to Col 3, Lines 3-10);

(vi) Gatts further disclosing generating at least one outcomes monitoring report comprising the selected one of the at least one outcome result and the norm (the computer plotted out a theoretical optimum cardiac performance curve i.e., norm, and the computer printed out the patient's summary cardiac curve, refer to Col 7, Lines 40-63);

In references to Menzie,

Although Gatts disclosing “collecting second outcome data sets with one or more medical procedures for the plurality of individuals” (i.e., the medical proceeding *are* for plurality of individuals)

Gatts, fails to explicitly disclosing that “collecting second outcome data sets of the plurality individuals”

Menzie, in analogous art as Gatts, disclosing that “collecting second outcome data sets of the plurality individuals (plurality of monitors each locates at a medical facility and is to collect a patient's physiological data, refer to Col 19, Lines 55-57 and Col 20, Lines 1)”

In references to Lin,

Lin in supports the combination of Gatts in view of Menzie by demonstrating that it would have been obvious and well know in the art at the time the invention was made to collect patients' data (e.g., medical sample data: triglycerides, glucose, cholesterol, total protein, liver enzymes) at various hospital laboratories via medical laboratory instruments, see Col 1, Lines 23-30), and average the data from all the laboratories (refer to Col 1, Lines 45-50). In another

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words, Lin demonstrates that it is well known for ordinary skill in the art to “*collecting first outcomes data sets associated with one or more medical procedures for a plurality of individuals in a first period of time via one or more user interfaces located at one or more user entities (collecting medical samples); establishing a norm based at least in part on an outcomes data group, the outcomes data group comprising a plurality of the first outcomes data sets associated with one of the one or more medical procedures for the plurality of individuals (average out the total sample from various sources such as medical laboratories);*”

The norm in Lin’s system is used to compare with the next collected sample data from each of the laboratory (refer to Col 12, Lines 40-53) in order to ensure the outliers is minimized (refer to Col 3, Lines 36 and Col 5, Lines 50-56). In another words, Lin disclosing “*collecting second outcomes data sets associated with the one of the one or more medical procedures for the plurality of individuals in a second period of time via the one or more user interfaces located at the one or more user entities; converting at least some of the second outcomes data sets associated with the one of the one or more medical procedures for the plurality of individuals comparing a selected one of the at least one outcomes result to the norm; and generating at least one outcomes monitoring report comprising the selected one of the at least one outcomes result and the norm.*”

Therefore, Appellant’s arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

(2) Claim 2:

Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Board’s attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Gatts discloses a central processor (see Fig 3) which processing the medical data collected from the sensors and machines. In another word, Gatts disclosing a data processor (a central processor, see Fig 3 and Col 2, Lines 60-67) receiving the first and second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the plurality of patients.

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

(3) Claim 3:

Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Boards attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Menzie, discloses the system implement a strict security features in order to preserve patient confidentiality such as encryption and/or use of a patient ID and password combination (refer to Col 11, Lines 10-15). In another words, Mentzie, discloses selectively restricting access (restrict access to test records and limit the access to either physician, patients, or processing centers that has user ID and passwords, refer to Col 11, Lines 9-10) to the at least one outcomes monitoring reports.

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

(4) Claim 4:

Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Boards attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Menzie, discloses posting the final test results on the central processing center (i.e., webpage, refer to Col 10, Lines 27-35 and Lines 49-56) and can be view via web browser (refer to Col 4, Lines 14). In another words, Menzie discloses posting at least one outcome monitoring report over the webpage (posting results on the web and can be view via the web browser).

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

(5) Claim 5:

Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Boards attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Menzie, discloses posting the final test results on the central processing center (i.e., webpage, refer to Col 10, Lines 27-35 and Lines 49-56) and can be view via web browser (refer

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to Col 4, Lines 14). Furthermore, Menzie disclosing the restriction is implemented on accessing the test results stored on the processing center (i.e., webpage) and require ID and password in order to access the secured information (refer to Col 11, Lines 8-15). In another words, Menzie discloses selectively restricting access to the webpage (allow access to only the individuals/entities that has ID/passwords to the test results).

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

(6) Claim 6:

Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Boards attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Gatts discloses that the test sample are sampled at many different intervals of time such as duration for exercise test which contains various intervals: periods for each different levels of intensity, and a period of resting (see Col 7, lines 35-37). In another word, Gatts discloses the second outcomes data sets (parameter values collected from the sets of exercise data associated with cardio performance testing,) associated with the one or more medical procedures (e.g., exercises test) from at least one user entity (at a clinic, refer to Col 6, Lines 31) at a plurality of discrete intervals (various period of times for various conditions of the test).

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

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(7) Claim 7:

Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Boards attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Gatts discloses the generating actual performance curve from collecting patient's data, and further generate a summary cardiac curve from at least two various periods (intervals for various periods on each different levels of intensity, and a period of resting (see Col 7, lines 35-37) . In another words, Gatts discloses generating the at least one outcomes monitoring reports (actual performance curve and a summary cardiac curve) from at least two of the plurality of discrete intervals (see Col 7, lines 35-37);

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

(8) Claim 8:

Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Boards attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Response similarly to Claim 1, Gatts discloses

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collecting second outcomes data sets (collect result data sets from patient including physical conditions and exercise test data, refer to Col 7, Lines 24-27) for the one or more indicators (one or more parameter values collected for a patient's body type, body temperature, blood pressure, oxygen consumption., etc, refer to Col 7, Lines 5-15) associated with the one or more medical procedures (e.g., test/medical procedures for establishing a cardiac performance test, refer to Col 7, Lines 40-45) for the individual located at the one or more user entities (collected by the connections of the medical machine, refer to Col 7, Lines 20-30, at clinic, refer to Col 6, Lines 31);

individually identifying and converting the some of the second outcomes data sets for the one or more indicators associated with the one or more medical procedures for the plurality of individuals located at each user entity of the one or more user entities ((e.g., converting the selected the parameter values collected from the sets of exercise data associated with cardio performance testing, where the testing is for collecting sets of data from the thousands of patients/people, (i.e., medical procedures for the plurality of individuals into a single weighted performance summary curve (i.e., outcome result), refer to Col 7, Lines 40-45 and Col 3, Lines 30);

wherein the second outcomes data sets for the one or more indicators associated with the one of the one or more medical procedures for the plurality of individuals located at the one or more user entities comprises the outcomes data group (refer to Col 7, Lines 12-19)

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

(9) Claim 9:

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Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Boards attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Gatts disclosing the system writes out written curves, summary curves, and also an theoretical optimum cardiac performance curve (refer to Col 7, Lines 40-62). In another words, Gatts, disclosing wherein the at least one outcomes monitoring report (write out) includes the at least one outcomes result (results such as summary curves) for a selected user entity of the one or more user entities (report for user selected clinic) and at least one comparison of the norm (written curves and theoretical optimum cardiac performance curve) to the least one outcomes result for the selected user entity;

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

(10) Claim 10:

Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Boards attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Gatts disclosing a computer (which contains memory i.e., computer readable medium, refer to Col 7, Lines 27-30) which capable to store computer program of instructions (computer

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carry out program instruction by processing the data, Refer to Col 7, Lines 30-45) which to perform the method as recited in Claim 1 (refer to rebuttal for Claim 1). In another words, Gatts discloses at least one processor readable medium (memory for computer) for storing a computer program of instruction (steps performed by the computer) configured to be readable by at least one processor for instructing the at least one processor to execute a computer process for performing the method as recited in claim 1 (refer back to Claim 1 explanations).

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

(11) Claim 26:

Appellant repeats the same arguments as set forth with respect to the Claim 1. The examiner respectfully directs the Boards attention to the response to these arguments above.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Gatt discloses one or more parameters includes a measured analytical data (measured of person's body weight, height, refer to Col 6, Lines 70-75). In another words, Gatts, disclosing wherein one or more indicators (one or more parameters values) includes at least one of verbal response, measured analytical data, and observations of a third party observer (indicators could includes measured analytical data)

Therefore, Appellant's arguments are not persuasive and Gatts, Menzie, and Lin disclosed the claimed limitations.

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Group 2: Claims 11-18 and 27

(12) Claim 11:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(13) Claim 12:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(14) Claim 13:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(15) Claim 14:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(16) Claim 15:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(17) Claim 16:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(18) Claim 17:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

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(19) Claim 18:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(20) Claim 27:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

Group 3: Claims 19-21, 23 and 28

(21) Claim 19:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(22) Claim 20:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims. The examiner respectfully directs the Boards attention to the response to these arguments above.

(23) Claim 21:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(24) Claim 23:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(25) Claim 28:

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Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

Group 4: Claims 24-25, 29, and 30

(26) Claim 24:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(27) Claim 25:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(28) Claim 29:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(29) Claim 30:

Appellant repeats the same arguments as set forth with respect to the group 1 of claims.

The examiner respectfully directs the Boards attention to the response to these arguments above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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/Karen C Tang/

Examiner, Art Unit 2451

July 22, 2009

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